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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

|                        |  |
|------------------------|--|
| Proceeding             | 92042082   |
| Party                  | Defendant<br>International Gold Star Trading Corp.   |
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| Submission             | Testimony For Defendant  |
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| Date                   | 04/28/2010   |
| Attachments            | Bekker Transcript - REDACTED.pdf ( 84 pages )(156713 bytes )<br>Registrant Ex. 140.pdf ( 2 pages )(106078 bytes )<br>Registrant Ex. 141.pdf ( 4 pages )(319692 bytes ) |

FOUR SEASONS DAIRY, INC., )  
 ) Cancellation No.  
 Petitioner, ) 92/042,082  
 )  
 vs. ) Mark: Babushka's Recipe  
 )  
 INTERNATIONAL GOLD STAR ) Reg. No. 2,479,287  
 TRADING CORP., )  
 )  
 Registrant. )  
 -----)

CONTAINS TRADE SECRET/COMMERCIALY SENSITIVE PORTIONS

CONFIDENTIAL EXAMINATION OF ALEXANDER BEKKER

New York, New York

Wednesday, October 22, 2008

Reported by:

KRISTIN KOCH, RPR, RMR, CRR, CLR

JOB NO. 19342a

October 22, 2008

2:12 p.m.

Confidential Examination of  
ALEXANDER BEKKER, held at the offices of  
Cohen, Pontani, Lieberman & Pavane, LLP,  
551 Fifth Avenue, New York, New York,  
before Kristin Koch, a Registered  
Professional Reporter, Registered Merit  
Reporter, Certified Realtime Reporter,  
Certified Livenote Reporter and Notary  
Public of the State of New York.

A P P E A R A N C E S:

SAMUEL FRIEDMAN, ESQ.

Attorney for Petitioner

225 Broadway - Suite 1804

New York, New York 10007

COHEN PONTANI LIEBERMAN & PAVANE, LLP

Attorneys for Registrant

551 Fifth Avenue - Suite 1210

New York, New York 10176

BY: ROGER S. THOMPSON, ESQ.

ALSO PRESENT:

ELLA AROLOVICH, Russian Interpreter

GALINA PINCOW, International Gold Star

OLEG KESLER, Four Seasons

1  
2 (Registrant Exhibit 140, Amended  
3 Notice of Deposition of Alexander Bekker,  
4 marked for identification.)

5 \* \* \*

6 (Interpreter was sworn.)

7 A L E X A N D E R B E K K E R,  
8 called as a witness, having been duly sworn  
9 by a Notary Public, was examined and  
10 testified as follows:

11 EXAMINATION BY

12 MR. THOMPSON:

13 Q. Thank you, Mr. Bekker. I have had  
14 the reporter mark as an exhibit a document  
15 which is entitled Amended Notice of Deposition  
16 of Alexander Bekker of Four Seasons Dairy, Inc.  
17 at 255 58th Street, Brooklyn, New York. Is  
18 that you?

19 A. Yes.

20 Q. Are you currently employed,  
21 Mr. Bekker?

22 A. Yes, I do.

23 Q. And where are you employed?

24 A. Four Seasons Dairy.

25 Q. And what is your position there?

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2 A. I am a vice president of the  
3 company.

4 Q. Are you also a shareholder of the  
5 company?

6 A. Yes.

7 Q. And what is your percentage of  
8 ownership of the company?

9 A. I don't remember the exact  
10 percentage. It's less than the percentage of  
11 the president's, but since day one we have been  
12 sharing profits 50/50.

13 Q. Can you tell me who the president of  
14 the company is?

15 A. Oleg Kesler, and he is present here.

16 Q. I'm sorry, was that Alec or Oleg?

17 A. Oleg.

18 Q. How long have you had the position  
19 of vice president at Four Seasons Dairy?

20 A. Since the company was started and it  
21 was January 1st of 1999.

22 Q. What does Four Seasons Dairy do?

23 A. We are distributors of dairy  
24 products mostly to the Russian supermarkets  
25 about 95 percent.

1 Bekker - Confidential

2 Q. Is that 95 percent of your business  
3 is directed to Russian supermarkets?

4 A. Yes.

5 Q. Do you know how many products Four  
6 Seasons Dairy sells?

7 A. We sell dairy products that include  
8 sour cream, feta cheese, condensed milk, butter  
9 and buttery spreads. Pot cheese, cottage  
10 cheese, yogurt, kefir and yogurt.

11 Q. Is that everything?

12 A. I may be forgetting something.

13 Q. Do you buy these products from other  
14 companies?

15 A. Yes.

16 Q. So you don't manufacture them  
17 directly?

18 A. We don't make the products, no.

19 Q. Are you familiar with the term  
20 "private label"?

21 A. Can you repeat the question? Do I  
22 know what --

23 Q. Do you know what the term "private  
24 label" means?

25 A. Yes.

1                   Bekker - Confidential

2           Q.       What is your understanding of what  
3 private label means?

4           A.       I understand that we have our own  
5 logo and the name under which we sell the  
6 products and we also test all the products that  
7 we sell.

8           Q.       My question was if you know what the  
9 term "private label" means.

10           MR. FRIEDMAN: Objection.

11           Q.       Do you have an understanding of what  
12 the words "private label" mean? And I am not  
13 sure you answered that question.

14           A.       You know, I'm not a lawyer. Maybe I  
15 am not answering it correctly.

16           Q.       So I will ask the question a  
17 different way.

18                   When you buy, and by "you" I mean  
19 when Four Seasons buys these products to have  
20 resold to the Russian supermarkets, does Four  
21 Seasons put its own label on those products?

22           A.       Every product that we sell has our  
23 name on it.

24           Q.       And do you pick the names of the  
25 products also?



1                   Bekker - Confidential

2                   MR. FRIEDMAN:  Objection.

3                   A.       Can you repeat the question again.

4                   Q.       Okay.  For example, it's my  
5 understanding that you sell certain products  
6 under the name Babushkine; am I correct?

7                   A.       Yes.

8                   Q.       And you sell other products that are  
9 not called Babushkine; am I correct?

10                  A.       Yes.

11                  Q.       But you have other names that you  
12 put on the products; am I right?

13                  A.       Yes.

14                  Q.       Who selects those names that you put  
15 on the products?

16                  A.       My partner and I, and sometimes the  
17 manufacturers themselves would advise us of  
18 what kind of name they would like to see.

19                  Q.       And by your partner you mean  
20 Mr. Kesler?

21                  A.       Yes.

22                  Q.       Now, you said that sometimes the  
23 manufacturer also gives you a name that they  
24 would like to see on the product.  Did I  
25 understand you correctly?

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2           A.     Yes.

3           Q.     Can you give me an example of a  
4 product that you currently sell where the name  
5 is given to you by the manufacturer?

6           A.     Do you mean the name of the product  
7 or the name of the goods?

8           Q.     The name of the product.

9           A.     We sell Amish butter, Amish cheese,  
10 and the company has a trademark for that name,  
11 so since it is their trademark, we put Amish  
12 butter on their butter.

13          Q.     And that company is    **REDACTED**

14          A.     Yes.

15          Q.     So it's your testimony, I am trying  
16 to make sure I understand, that   **REDACTED**  
17 has a trademark for   **REDACTED**

18          A.     Yes.

19          Q.     And that they have asked you to put  
20 their trademark on the goods that you resell  
21 that you have purchased from them?

22          A.     Yes.

23          Q.     Are there any other trademarks that  
24 you have applied to goods at the request of  
25 manufacturers?

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2 A. No.

3 Q. So I would be correct then that  
4 every other name that you have applied to your  
5 products was selected by Four Seasons Dairy?

6 A. As far as I remember, yes.

7 Q. Do you know who at Four Seasons  
8 Dairy selected these other names?

9 A. My partner and I did that.

10 Q. And you do that together?

11 A. Yes.

12 Q. Do you remember how you developed  
13 the name Babushkine?

14 A. That was popular in our motherland,  
15 in our country, native country where we come  
16 from.

17 Q. Are you saying that there were  
18 products sold in Russia with a trademark of  
19 Babushkine?

20 MR. FRIEDMAN: I am just going to  
21 object to the use of the term "trademark"  
22 in connection with Russia.

23 MR. THOMPSON: You can answer.

24 THE WITNESS: Repeat it.

25 (Record read.)

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2 A. In Russia when I used to live there,  
3 they didn't have as many stores as here and  
4 it's considered to be the most delicious food  
5 to be the one that your babushka makes at home.

6 Q. First, when did you leave Russia?

7 A. In '92.

8 Q. My question was are you aware of any  
9 commercial products that bore the name  
10 Babushkine, Babushkino, Babushka that were sold  
11 in Russia before you left?

12 A. Yes.

13 Q. What types of products were they?

14 A. They used to sell babushka's butter,  
15 babushka's margarine.

16 Q. Was that the end of it?

17 A. As far as I remember, yes.

18 Q. And those, you say, were sold in  
19 Russia in 1992 and earlier?

20 A. Yes.

21 Q. What part of Russia are you from?

22 A. I actually came here from Ukraine.

23 Q. Where in Ukraine?

24 A. Odessa. Most of the people speak  
25 Russian over there.

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2 Q. To what type of products does Four  
3 Seasons apply the name Babushkine?

4 A. Butter and the butter blend, which  
5 is the butter mixed with oil, feta cheese and  
6 farmer cheese and the yogurt.

7 Q. And just so I am clear, are you  
8 saying to yogurt or to a yogurt cheese?

9 A. The yogurt that you drink.

10 Q. Kefir?

11 A. It's a baked style kefir.

12 Q. Do you remember which of those  
13 products was the first one that you sold with  
14 the name Babushkine?

15 A. Yes. The first one was the butter  
16 mixed with oil and it was called butter blend.

17 Q. And could you please describe for me  
18 how you went about choosing that specific name  
19 for that specific product?

20 A. My partner and I remember that  
21 babushka's food is most delicious and we wanted  
22 to have a product that is delicious and also  
23 has zero cholesterol. So when we decided that  
24 we want this type of product, we decided to  
25 make that. So it was a butter blend with zero

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2 cholesterol. It didn't contain any salt.

3 Q. I am just not sure if you are  
4 through.

5 A. Yes.

6 Q. My question, though, is how you  
7 decided to apply the name Babushkine to that  
8 product.

9 A. So you are asking me how we decided  
10 to call that product with the name Babushkine?

11 Q. Yes.

12 A. But I explained to you. Both of us  
13 knew since childhood that whatever your  
14 babushka did or your grandmother did is very  
15 delicious, so that's why we decided to give the  
16 name to the product grandma, babushka.

17 Q. I will remind you that I have  
18 previously participated in a deposition that  
19 you have given. Do you remember that?

20 A. Yes.

21 Q. Do you remember telling me at that  
22 time that you had seen a product in a store in  
23 New York City in, I believe, Brooklyn called  
24 Yuzhni; am I correct?

25 A. Yes.

1                   Bekker - Confidential

2           Q.     And do you remember that testimony?

3           A.     Yes, I do.

4           Q.     Is it still your recollection that  
5 you saw that product in the store -- let me  
6 finish my question. It's hard enough for the  
7 translator to get one set of translations  
8 rather than two at the same time, so excuse me.  
9 So I will try that question again so we have a  
10 clear question and answer.

11                   Is it still your testimony that you  
12 saw a product on sale in Yuzhni that had the  
13 name Babushka on it?

14          A.     Yes.

15          Q.     Can you describe the packaging of  
16 that product to me.

17          A.     It was Babushka's butter from  
18 Russia. It didn't contain one word in English,  
19 meaning that it was an illegal product here.  
20 It was packed in the Gold foil, 200 grams. It  
21 wasn't salted. And they had their logo on it,  
22 Babushka.

23          Q.     Did it include a picture of a  
24 babushka and the word "Babushka"?

25          A.     Yes.

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2 Q. Do you remember the name of the  
3 manufacturer of the product?

4 A. A Russian company from Leningrad,  
5 St. Petersburg.

6 Q. And do you remember when you saw  
7 that product?

8 A. It was a store named Yuzhni.

9 Q. I said when, not where.

10 A. I cannot say exactly when, but it  
11 was before 1996, but I don't remember exactly  
12 when.

13 Q. Why do you remember that it was  
14 before 1996?

15 A. I remember that because at that  
16 particular time we had our own store and, in  
17 fact, it was our customers that would come to  
18 our store who told me that there is such butter  
19 and they sell it there.

20 Q. First you said that "we" had a  
21 store. Who is the "we" to whom you are  
22 referring?

23 A. My partner and I, we have a store.

24 Q. And who is your partner?

25 A. His name was Edward Shlapak.



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2 Q. And when did you have that store?

3 A. Since '94.

4 Q. That would be beginning in 1994?

5 A. I don't remember exactly.

6 Q. I am just trying to make clear, you  
7 said since -- at least the translator said  
8 since 1994.

9 A. I worked there as the manager since  
10 1994 until '96, I was the manager there, and in  
11 1996 when this partner and I started our  
12 corporation, then I bought the store.

13 Q. What was the name of that store?

14 A. Friendly Food.

15 Q. And when you referred to this  
16 partner, you gestured with your hand to  
17 Mr. Kesler?

18 A. Yes.

19 Q. And that's to whom you were  
20 referring as this partner?

21 A. Yes.

22 Q. Just to remind you that since we are  
23 working with a printed record, when one  
24 gestures or points, it can be very difficult to  
25 translate that to the printed record unless we

1                   Bekker - Confidential

2       say something specifically. So I am not trying  
3       to be difficult. I am just trying to make the  
4       record clear.

5                   Now, during the course of your  
6       earlier deposition you testified as to when you  
7       at Four Seasons first started selling  
8       Babushkine products. Do you remember that?

9           A.       Yes.

10           MR. FRIEDMAN: I will just object  
11       on the grounds that that transcript will  
12       speak for itself.

13           MR. THOMPSON: I am only asking him  
14       if he remembers.

15       Q.       Did you have the opportunity to  
16       review that transcript?

17       A.       No.

18       Q.       So you haven't read the written  
19       words; am I right?

20       A.       No.

21       Q.       So I was correct when I said you had  
22       not read them?

23       A.       Yes.

24           MR. FRIEDMAN: I would just note  
25       that the transcript is in the English

1                   Bekker - Confidential

2           language. The witness is testifying in  
3           Russian.

4                   MR. THOMPSON: I understand. It  
5           wasn't a characterization. I am just  
6           trying to see when the last time he had the  
7           opportunity to review his testimony was.

8           Q. I will just ask you if you remember  
9           your testimony from before.

10          A. Yes, I do.

11          Q. Do you believe there is anything  
12          which has happened that would cause you to  
13          change any of the testimony that you had given  
14          previously?

15          A. I think I remember everything and I  
16          don't think I have changed anything.

17          Q. I am not asking you if you have  
18          changed it. I am asking if on reflection or  
19          thinking about it more if something has brought  
20          to your memory something that you might have  
21          forgotten or may have misspoken at your earlier  
22          deposition.

23          A. Maybe I didn't say something or  
24          maybe I forgot to say something.

25          Q. Is there something that you now know

1                   Bekker - Confidential

2       that you forgot to say before?

3           A.       Regarding what exactly?

4           Q.       I don't have a specific instance. I  
5       am just asking if you remember something now  
6       that you think you should have said before.

7           A.       I remember almost everything and I  
8       think I said almost everything.

9           Q.       Can you please tell me if Four  
10       Seasons sells any dairy products that have a  
11       name on them other than Babushkine that Four  
12       Seasons developed for itself?

13                   MR. FRIEDMAN: Objection.

14          A.       I don't understand your question.

15          Q.       I will be more specific. Does Four  
16       Seasons sell a product called New Salzberg  
17       cheese?

18          A.       Yes.

19          Q.       Do you remember when Four Seasons  
20       began to sell New Salzberg cheese?

21          A.       I don't remember exactly when.

22          Q.       Do you have a general recollection  
23       of when?

24          A.       No. I have to look at the  
25       documents. I can't remember.

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2           Q.     Do you remember if it was more than  
3 a year ago?

4           A.     Yes.

5           Q.     Do you know if it was more than five  
6 years ago?

7           A.     Maybe somewhere around five.

8           Q.     So around five years ago?

9           A.     But I don't remember exactly.

10          Q.     I understand. But it wasn't ten  
11 years ago?

12          A.     No.

13          Q.     So somewhere between one and ten  
14 years?

15          A.     Yes.

16          Q.     And you think around five?

17          A.     Yes.

18          Q.     Do you remember how Four Seasons  
19 selected the name "Salzberg" to apply to the  
20 cheeses?

21                   MR. FRIEDMAN: Objection.

22                   MR. THOMPSON: On what basis?

23                   MR. FRIEDMAN: First you said New  
24 Salzberg, then you said Salzberg.

25                   MR. THOMPSON: Thank you.

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2 Q. Do you remember how Four Seasons  
3 came to select the name New Salzberg to apply  
4 to cheeses?

5 A. When we still had a store, Austrian  
6 products were very popular and we were selling  
7 cheese that was called Salzberg and we decided  
8 to make new cheese and we decided to call it  
9 New Salzberg.

10 Q. I will ask you to look at a document  
11 that has previously been marked as Exhibit 111.  
12 Please let me know after you have had the  
13 chance to look at that document.

14 A. When I had --

15 Q. When you have had a chance to look  
16 at it.

17 A. I don't understand.

18 Q. Are you familiar with what  
19 Exhibit 111 is?

20 A. Yes.

21 Q. And what is it?

22 A. That's a label called New Salzberg  
23 cheese. It has a picture in it. I believe it  
24 is a picture of Salzberg. And company REDACTED  
25 makes products for us that look similar to the

1                   Bekker - Confidential

2       cheese that once -- similar to the Austrian  
3       cheeses.

4           Q.       And specifically it's similar to the  
5       cheese you formerly knew as a Salzberg cheese?

6           A.       Yes, you can say that.

7           Q.       Do you know if anyone has exclusive  
8       rights to the name "Salzberg" for cheese?

9           MR. FRIEDMAN: I just object to the  
10       extent it calls for a legal conclusion.

11          MR. THOMPSON: I am asking him what  
12       he knows.

13          A.       I don't know that.

14          Q.       Before selecting the name New  
15       Salzberg cheese to apply to your cheese at Four  
16       Seasons, did you try to find out if anyone had  
17       the rights to use the name?

18          MR. FRIEDMAN: Could you please  
19       specify which name.

20          MR. THOMPSON: A name including  
21       "Salzberg."

22          MR. FRIEDMAN: I object to the form  
23       of the question.

24          A.       I didn't understand the question.  
25       Would you please --

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2 Q. Sure. I will try to break it down.

3 You have testified, as I understand,  
4 that you had been aware of a company selling a  
5 cheese called Salzberg cheese.

6 A. Yes. This cheese comes from  
7 Salzberg.

8 Q. And that you were aware of that back  
9 when you had a store.

10 A. Yes.

11 Q. And it's my understanding from your  
12 testimony that you had the store between  
13 roughly 1994 and 1996.

14 A. Yes.

15 Q. And that also, judging by your  
16 testimony today, you began to sell, and by  
17 "you" I mean Four Seasons began to sell New  
18 Salzberg cheese in about 2002, 2003, in that  
19 range.

20 A. Quite possible, yes.

21 Q. And it's my understanding that you  
22 personally are one of the two people who  
23 selected the name "New Salzberg" for use by  
24 Four Seasons.

25 A. Yes.



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2           Q.     And that you are one of the people  
3 who chose the label that we see as Exhibit 111.

4           A.     Yes.

5           Q.     Before choosing the label that we  
6 see as Exhibit 111, did you take any steps to  
7 determine if anyone else had the rights to use  
8 the name "Salzberg" with respect to cheese?

9           A.     No, we did not find out. We weren't  
10 researching that, no.

11          Q.     I will ask you to look at what has  
12 been marked as Exhibit 130. I will hand that  
13 to you. Please let me know when you have had a  
14 chance to look at that document.

15          A.     My lawyer has received this document  
16 and I believe it came from the company Gold  
17 Star.

18          Q.     Do you remember seeing this label  
19 applied to any cheeses at any point in time  
20 before today?

21          A.     After we got the letter we came and  
22 we took a look.

23                   MR. THOMPSON: I'm sorry, from your  
24 inflection, it sounded like there was more.

25                   THE INTERPRETER: I was expecting

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2 more too. I don't know.

3 Q. Were you through with your  
4 testimony?

5 A. Yes.

6 MR. THOMPSON: Okay. I'm sorry.  
7 Sometimes when we are dealing with the  
8 translator we can't be sure if you were  
9 done with your answer or if you were just  
10 pausing to allow the translator to  
11 translate, so I apologize for the  
12 confusion.

13 Q. Now, you mentioned in your answer  
14 when you got the letter. What letter are you  
15 referring to?

16 A. The letter from a company Gold Star  
17 that they want some amount of money from us, I  
18 don't remember what amount -- no, I didn't say  
19 correctly. I don't remember the exact words,  
20 but because we were selling this particular  
21 product and yogurt cheese, yes.

22 Q. When you just gestured right now at  
23 this particular product, you put your hand on  
24 the label that is Exhibit 111. Am I right?

25 A. New Salzberg cheese.

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2 Q. And, again, for the record that's  
3 number 111; am I right?

4 A. I don't see the number anywhere.

5 Q. (Indicating.)

6 A. 111.

7 Q. I am correct that that is 111?

8 A. Yes.

9 Q. And, again, I do this for the record  
10 so it's clear what you are referring to.

11 Do you remember when you got this  
12 letter?

13 A. No.

14 Q. Do you know if this letter was  
15 directly from Gold Star or from an attorney  
16 working for Gold Star?

17 A. No, it was -- actually I think I  
18 believe I said it was from their attorney.

19 Q. And it's your recollection that this  
20 letter specifically mentioned New Salzberg  
21 cheese?

22 MR. FRIEDMAN: Which one, Roger?

23 MR. THOMPSON: I am trying to figure  
24 out what he was testifying to.

25 MR. FRIEDMAN: Could you do your

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2                   question again.

3                   MR. THOMPSON:   Sure.

4                   Q.       And it is your specific recollection  
5                   that this letter that you are referring to  
6                   specifically mentioned New Salzberg cheese?

7                   A.       Yes, as far as I remember.

8                   Q.       And what did you do in response to  
9                   this letter?

10                  A.       Like I said, we got the letter.  
11                  They were saying about yogurt cheese there in  
12                  that letter, which would be number 110, and  
13                  they were talking about this cheese 111, and we  
14                  went to the grocery stores and started looking  
15                  at the products there and that's it.

16                  Q.       And it's your testimony then, to  
17                  make sure that I understand what you just said,  
18                  and please tell me if I am wrong, that you were  
19                  not aware of Gold Star selling an Old Salzberg  
20                  cheese until after you got this letter that you  
21                  are referring to?

22                  A.       No, I did not know.

23                  THE INTERPRETER:   I'm sorry, I have  
24                  to make a phone call.

25                  MR. THOMPSON:   Okay.   We will take a

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2 break for five minutes.

3 MR. FRIEDMAN: Sure.

4 (Recess was taken from 2:58 to  
5 3:11.)

6 BY MR. THOMPSON:

7 Q. Before we get back to where we just  
8 were, you had indicated, Mr. Kesler, that you  
9 had owned a store called Friendly Food in  
10 Brooklyn, New York.

11 A. Yes.

12 Q. And what was the address of that  
13 store?

14 A. At first I was the manager of the  
15 store at the address of 6801 20th Avenue, then  
16 I was a manager at the store 1769 84th Street,  
17 and that's when I bought it, when I already had  
18 the corporation, and yes, the name of the store  
19 was Friendly Food.

20 Q. What happened to the store after you  
21 stopped being associated with it?

22 A. We just closed that store and that's  
23 it.

24 Q. So it's no longer in business?

25 A. Yes.

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2 Q. You didn't sell it to someone?

3 A. We tried to sell it. And the person  
4 who wanted to buy it, he had not -- he didn't  
5 have money for the transaction and so we  
6 weren't able to sell the store to him.

7 Q. Do you know if when you were at  
8 Friendly Foods if you had had any business  
9 dealings with the International Gold Star  
10 Trading Corporation?

11 A. Yes, we did.

12 Q. And what kind of dealings did you  
13 have?

14 A. We were buying products.

15 Q. Do you remember what kinds of  
16 products?

17 A. I don't remember exactly which ones.

18 Q. Do you remember if it included dairy  
19 products?

20 A. Yes.

21 Q. And do you remember specifically any  
22 of the brands of products that you purchased  
23 from International Gold Star?

24 A. No, I don't remember exactly.

25 Q. Was that your first experience in

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2 dealing with International Gold Star?

3 A. Yes. When I was still a manager.

4 Q. Was that the first time you had even  
5 heard of Gold Star?

6 A. Yes.

7 Q. Now, right before we broke briefly  
8 you had indicated that you had received a  
9 letter from the attorney for Gold Star. Do you  
10 remember saying that?

11 A. Yes.

12 Q. And it was my understanding that you  
13 stated that the letter concerned the New  
14 Salzberg label. Am I correct?

15 A. As far as I remember, yes.

16 Q. And you had said that it also  
17 concerned a different label.

18 A. Yes.

19 Q. And which label was that?

20 A. It was talking about the cheese that  
21 was called Amish yogurt cheese.

22 Q. Is that the same one that we have in  
23 Exhibit 110?

24 A. Yes.

25 MR. THOMPSON: I will ask to have

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2           this marked as Exhibit 141.

3                   (Registrant Exhibit 141, letter  
4           dated December 28, 2005, marked for  
5           identification.)

6                   MR. THOMPSON: I will ask the  
7           translator to read the letter, not the  
8           attachments for right now, to him so he can  
9           understand what is in it.

10                   (Interpreter translates document.)

11                   MR. FRIEDMAN: Roger, I would just  
12           like to point out for the record that your  
13           letter at page 2 indicates that it has two  
14           enclosures, whereas what you have handed  
15           out has one enclosure.

16                   MR. THOMPSON: I will just represent  
17           that's all I had in my file, so I just  
18           quickly during the break ran and made a  
19           copy of it. For the record, what we have  
20           marked as Exhibit 141 is a letter from this  
21           law firm, Cohen Pontani Lieberman & Pavane,  
22           to Mr. Samuel Friedman, which I apologize,  
23           I think I misspelled it, dated December 28  
24           of 2005. It's a two-page letter with a  
25           two-page attachment and that two-page



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2 attachment is a listing from the official  
3 website of the United States Patent and  
4 Trademark Office relating to federal  
5 trademark registration number 2,107,774.

6 Q. Now, Mr. Bekker, you have had the  
7 opportunity to have this letter translated for  
8 you. Is it your recollection that this is the  
9 letter that you testified about earlier?

10 A. I don't remember exactly, but I do  
11 remember getting a letter that say that owe  
12 \$50,000. This letter doesn't say that. And  
13 they were talking about New Salzberg cheese and  
14 Amish yogurt cheese.

15 Q. So this is not the letter you  
16 remember getting?

17 A. This letter in particular I do not  
18 remember.

19 Q. Do you remember which law firm sent  
20 you that other letter?

21 A. That's the one.

22 MR. FRIEDMAN: Referring to this law  
23 firm.

24 MR. THOMPSON: Yes.

25 MR. FRIEDMAN: Meaning your law

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2           firm.

3                   MR. THOMPSON:   Cohen Pontani  
4           Lieberman & Pavane.   I will go check my  
5           records again to see if I see anything else  
6           on our next break.

7           Q.       I'm sorry.   I just want to be clear  
8           on your answer to the earlier question.   It's  
9           your testimony, am I correct, that you do not  
10          remember receiving or seeing a copy of  
11          Exhibit 141?

12          A.       I can't say for sure.

13          Q.       My question was only do you remember  
14          right now.

15                   MR. FRIEDMAN:   He gave you his  
16          answer.

17                   MR. THOMPSON:   I am just trying to  
18          be clear on what the answer was.

19          A.       I said that I remember the letter  
20          that would say that we owe \$50,000 and that  
21          letter were talking about two labels, New  
22          Salzberg cheese and   **REDACTED**   cheese --  
23          Amish yogurt cheese.   I'm sorry.

24          Q.       I thank you and I understand that,  
25          Mr. Bekker.   My only question was if you

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2       remember seeing this letter before today.

3           A.       No, I don't.

4           Q.       So could you tell me what you did,  
5       if anything, in response to the letter you do  
6       remember getting?

7                   MR. FRIEDMAN:  Objection to the  
8       form.

9           Q.       Do you have a recollection of doing  
10      anything in response to the letter that you  
11      testified receiving that mentioned the New  
12      Salzberg label?

13          A.       What did we do after that?

14          Q.       Yes.

15          A.       We looked at our labels and we  
16      looked at the included labels.  For instance,  
17      New Salzberg cheese, it's a new name.  It's  
18      called New Salzberg cheese.  In the town of  
19      Salzberg they actually have quite a few  
20      manufacturers who make cheese and we wanted to  
21      make a cheese that would not be identical to  
22      the one from Salzberg but would be similar to  
23      it and we would like the taste to it.  And the  
24      customers were aware that it's a New Salzberg,  
25      a new cheese.  Just like the city New York.

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2 Similar to Amish yogurt cheese. Manufacturer  
3 is REDACTED They exist since 1935. And, in  
4 fact, all their boxes have this logo on them.  
5 And the cheese that we made were completely  
6 dissimilar from the company -- the one that  
7 were saying the Bunker Hill.

8 MR. THOMPSON: I'll just ask to have  
9 that one read back.

10 (Record read.)

11 Q. I have some questions about the  
12 answer you just gave. You first said something  
13 about coming from 1935, and what was in 1935?

14 A. The company that creates the cheese  
15 for us, this cheese, is called REDACTED Cheese  
16 and that company exists since 1935.

17 Q. Okay. Is it your understanding that  
18 that company was selling a cheese called New  
19 Salzberg in 1935?

20 A. No, I didn't say that.

21 Q. I am trying to make sure I  
22 understand. You testified, I believe, that  
23 Four Seasons first started selling the New  
24 Salzberg cheese sometime roughly in 2002, 2003,  
25 sometime in that frame. Is that right?

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2           A.     Yes.

3           Q.     To be clear, you had REDACTED produce  
4 that cheese for you?

5           A.     Yes.

6           Q.     Do you know if REDACTED was making a  
7 cheese called New Salzberg before that time?

8           A.     No, they did not.

9           Q.     Do you know if they made an  
10 identical cheese that you sold under the name  
11 New Salzberg before you approached them to make  
12 New Salzberg cheese for you?

13           MR. FRIEDMAN: Object to the form.

14           MR. THOMPSON: On what basis?

15           MR. FRIEDMAN: I don't understand  
16 the question.

17           MR. THOMPSON: All right.

18           Q.     Do you know if REDACTED made a cheese  
19 that was the same as what you sold under the  
20 New Salzberg label before you had them make New  
21 Salzberg cheese for you?

22           MR. FRIEDMAN: I am going to repeat  
23 the objection. It's unclear. Do what you  
24 want.

25           Q.     Are you able to answer the question?

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# REDACTED

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# REDACTED

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# REDACTED



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REDACTED

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2 MR. THOMPSON: I am just asking if  
3 he remembers when we discussed it earlier  
4 today. That's all I am asking.

5 MR. FRIEDMAN: Which letter?

6 MR. THOMPSON: The one that he  
7 mentioned about that mentioned to him the  
8 Bunker Hill cheese and the Salzberg cheese.  
9 The one that I have not put in front of  
10 him.

11 MR. FRIEDMAN: Okay.

12 Q. Do you remember that discussion?

13 A. Yes.

14 Q. I believe you referred to the letter  
15 having reference to a yogurt cheese label which  
16 is Exhibit 110. Am I right?

17 A. One more time?

18 Q. I believe you had said that that  
19 letter made mention of the Four Seasons label  
20 that we see as Exhibit 110. Am I right?

21 MR. FRIEDMAN: I object to this.

22 This is totally confusing and I point out  
23 to you that your own exhibit, 141, says  
24 itself it has two enclosures and why don't  
25 you take a look at what your letter says

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2                   that its enclosures are.

3                   MR. THOMPSON:   Except he has  
4                   testified that this is not the letter that  
5                   he remembers getting, so I can't point to  
6                   my letter, because the letter that he  
7                   remembers getting mentions a \$50,000  
8                   figure, which is not in that exhibit, nor  
9                   does it mention the Salzberg cheese, so I  
10                  can't point to an exhibit, because I don't  
11                  have it in front of him.

12                 MR. FRIEDMAN:   But it's highly  
13                 confusing when you ask the witness to  
14                 assume that another letter that you haven't  
15                 located, apparently, has an exhibit which I  
16                 don't know that there has been a foundation  
17                 laid that it had an exhibit.

18                 MR. THOMPSON:   I am attempting to  
19                 determine what he remembers about this  
20                 letter, because I don't remember sending  
21                 that letter.

22                 MR. FRIEDMAN:   I remember receiving  
23                 it.

24                 MR. THOMPSON:   Okay, but I don't  
25                 remember it, so I can't put my fingers on

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2           it, and if that label is the one that he  
3           remembers being in it, that's what I am  
4           attempting to determine.

5                   MR. FRIEDMAN: But you have not laid  
6           a foundation that he does remember that  
7           label, that that label was in that letter.

8           Q.     Do you remember if the letter that  
9           you mentioned, the one that on the one hand  
10          mentioned the New Salzberg logo, also mentioned  
11          a Four Seasons label for a yogurt cheese?

12          A.     Maybe. I don't remember the letter  
13          exactly, but yes, as far as I remember.

14          Q.     Is it your recollection that the  
15          reference was to the label of Four Seasons that  
16          we see in Exhibit 110?

17          A.     I can't confirm this. If I would  
18          see this letter, I would tell you for sure.

19          Q.     I will take another look for it on  
20          our next break. But for now, do you recognize  
21          the label that's in Exhibit 110?

22          A.     This one, yes.

23          Q.     And is that a label of a product  
24          that is sold now by Four Seasons?

25          A.     Yes.

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2 Q. Do you remember when Four Seasons  
3 first began to sell a product with that label  
4 on it?

5 A. I don't remember for sure, but  
6 somewhere between one year and ten years.  
7 Actually, I would say somewhere between five to  
8 ten years.

9 Q. So sometime between 2003 and 1998?

10 A. I don't remember for sure. It could  
11 be 2005 and '99.

12 Q. Well, I believe you testified that  
13 Four Seasons was incorporated in January of  
14 1999. Am I right?

15 A. That's how I say it, yes.

16 Q. So Four Seasons would have had to be  
17 selling that product after 1999; is that right?

18 A. That I said so, yes.

19 Q. I am making sure.

20 Do you remember if this is one of  
21 the first products you sold once you founded  
22 Four Seasons Dairy?

23 A. No, that was not the first product.

24 Q. Do you remember if it was among the  
25 first?

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2 A. No, it wasn't.

3 MR. FRIEDMAN: I just have an  
4 objection. I'd like verification. When  
5 you use the word "product," do you mean the  
6 brand, the name, or do you mean the type of  
7 food?

8 MR. THOMPSON: I am referring to the  
9 product bearing that label.

10 MR. FRIEDMAN: The type of food?

11 MR. THOMPSON: Well, it could have  
12 been a different type of food with a  
13 different label. I am not as interested in  
14 that. I am trying to determine when that  
15 label was first used.

16 MR. FRIEDMAN: The label?

17 MR. THOMPSON: Yes, with that name,  
18 picture, et cetera.

19 Q. Now, you have testified, I believe,  
20 that the name **REDACTED** belonged to your  
21 manufacturer, **REDACTED** am I right?

22 A. Yes.

23 Q. Did they design this label?

24 A. No. My partner and I designed it,  
25 but they adopted it.

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2 Q. I don't know what you mean by "they  
3 adopted it."

4 A. We sent them and they confirmed yes.

5 Q. So you proposed a label to REDACTED  
6 and REDACTED agreed to put the label on the  
7 product?

8 A. Yes.

9 Q. Does REDACTED physically apply the  
10 labels to the product?

11 A. I don't remember for how long, but I  
12 think during the first year they were the ones  
13 who would be applying the label themselves.  
14 They were applying the labels. Then they  
15 started asking for more money for applying the  
16 label and they were also out of the label that  
17 they already had at their warehouse. So from  
18 that point on we were the ones who would do  
19 everything.

20 Q. So to make sure I understand, the  
21 products would be shipped to you with no  
22 labels?

23 A. Yes, but the box would have a  
24 sticker.

25 Q. What kind of sticker would be on the

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2 box?

3 A. That sticker would say "Amish yogurt  
4 cheese." Also the weight of the product, the  
5 expiration date. That's it. And actually it  
6 would say "distributed by Four Seasons" on the  
7 top of it.

8 Q. This is the label that was on the  
9 box?

10 A. Sticker.

11 Q. A sticker on the box?

12 A. Yes.

13 Q. Did it have this picture on it of  
14 the buggy and horse?

15 A. On the box?

16 Q. On the box.

17 A. No. When the labels they had were  
18 finished, they couldn't send them anymore.  
19 When they possess the labels, then yes.

20 Q. Do you know where this photograph of  
21 the horse and buggy came from?

22 A. Our designer, Quick Graphics, they  
23 have the CD that contained pictures that are  
24 free. It means that everybody could use them.  
25 So they offered us to use this picture.



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2       Because that picture is called Amish something.  
3       Yes.

4           Q.       And who chose the other components  
5       of the label, for example, all the words that  
6       appear on the bottom?

7           MR. FRIEDMAN:   Roger, when you say  
8       "bottom," there is like a front and a back  
9       image. The front image is on the top, the  
10      back image is on the bottom. When you say  
11      "bottom," what do you mean?

12          Q.       The label, as it was removed from  
13      the product, is now in two pieces. I am  
14      stating this for the written record. I know  
15      you can see it. The first part is the one that  
16      bears the exhibit tabs on it. The second part  
17      bears the name Amish yogurt cheese with a  
18      supermarket label and some other wording  
19      including nutrition facts.

20                 If I refer to the part that has the  
21      exhibit labels on it as the top part and the  
22      other part as the bottom part, simply because  
23      that's the way they appear on the printed page,  
24      is that acceptable to you? I am trying to make  
25      us clear on what I am referring to if I refer

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2       to something at the top and the bottom.

3                   The label as it appears on the page  
4       that is in front of you is in two pieces; am I  
5       right?

6           A.       Yes.

7           Q.       And the top part as it appears on  
8       that page has a picture of a horse and buggy  
9       and it has two stickers on top of the label.  
10      Am I right?

11          A.       Yes.

12          Q.       And the other part, which I will  
13      refer to as the bottom part, has what I would  
14      characterize as a supermarket label that says  
15      Amish yogurt cheese with a price of \$6.04 and a  
16      "use by" date of October 27, 2008, among other  
17      information.

18          A.       Yes.

19          Q.       So if I refer to these two pieces as  
20      the top and the bottom, are we in agreement?

21          A.       Yes.

22          Q.       I will direct your attention to the  
23      bottom. Who selected the words which appear on  
24      the left and right side of the bottom part of  
25      the label that is Exhibit 110?

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2 A. The words of the product, yogurt  
3 cheese, REDACTED Manufacturers, they made it  
4 before us, that particular cheese, and it was  
5 their label that contained those words.

6 Q. So at the top of the bottom portion  
7 of Exhibit 110, the words "yogurt cultured"  
8 appear. Do you see that?

9 A. Yes.

10 Q. Did those words appear because Four  
11 Seasons asked them to be there or for some  
12 other reason?

13 A. Yogurt cheese it's called because  
14 the product has been made with the cultured  
15 yogurt bacteria, so that's why it says yogurt  
16 cultured.

17 Q. My question was who selected it?  
18 Who chose those words to go on the label?

19 A. Yogurt cultured, it simply means  
20 that it was cultured, it's part of the  
21 ingredients. I didn't need to choose it.

22 Q. Somebody had to design the label.

23 A. But I said Oleg and I designed it.

24 Q. So you selected the typeface to use  
25 for the words; is that right?

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2           A.     Yes.

3           Q.     And you chose the colors that the  
4 words would appear?

5           A.     Yes.

6           Q.     And you chose the words themselves  
7 that would appear there?

8           A.     Yes.

9           Q.     Now, as we have established, given  
10 that we have a translator here, English is not  
11 your first language. Am I correct?

12          A.     Yes.

13          Q.     Did you have any assistance in  
14 choosing the English language words which  
15 appeared on this label?

16          A.     We also have a designer.

17          Q.     So the people who were involved with  
18 creating this part of the label were yourself,  
19 Mr. Oleg Kesler, and your designer?

20          A.     Yes, all the labels that we make  
21 were made with our designer.

22          Q.     Besides the three of you, was there  
23 anyone else involved?

24                   MR. FRIEDMAN: I am just going to  
25 object to your using the number three.

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2 MR. THOMPSON: He has testified that  
3 there were three people involved; himself,  
4 Mr. Kesler and a designer.

5 MR. FRIEDMAN: Well, designer  
6 doesn't necessarily mean person. I don't  
7 know.

8 Q. How many individuals were involved  
9 with the creation? Was it three people?

10 A. In our company all the decisions are  
11 made by me and Oleg.

12 Q. I am asking, though, with respect to  
13 the designer, was there one person who was the  
14 designer or are you referring to a company with  
15 a number of people who would all be the  
16 designer?

17 A. Well, our designer possibly has some  
18 employees or workers who help.

19 Q. What is the name of the individual  
20 at the designer with whom you worked?

21 A. Ari.

22 Q. Is that Ari Zurinan?

23 A. Yes.

24 Q. Did you work with any individual at  
25 Quick Graphics directly in addition to

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2       Mr. Zurinan?

3           A.       Yes, because he has some people  
4       there who correct something.

5           Q.       Do you remember who selected the  
6       particular coloring of the type on the label?

7           A.       Mostly Oleg and I, we prefer colors  
8       red and green, mostly. In fact, more than  
9       50 percent of our labels contain these colors.

10           MR. FRIEDMAN: I would just like to  
11       note on the record my continuing objection  
12       to this line of testimony as irrelevant to  
13       the issues in this particular cancellation  
14       proceeding.

15           Q.       When you selected these particular  
16       colors, had you made any reference to any other  
17       products in reaching the decision to make the  
18       label look like what it looks like now?

19           MR. FRIEDMAN: Could you read that  
20       question back, please.

21                   (Record read.)

22           A.       All the decisions are made by my  
23       partner and I and that's how we see it and  
24       that's how we make the labels.

25           Q.       I will ask you to look at what has

1 Bekker - Confidential

2 been marked as Exhibit 104 and I will ask if  
3 you have seen that before today.

4 A. Yes.

5 Q. When did you first see this label?

6 A. When we got the letter from our  
7 lawyer who got the letter from Cohen.

8 MR. FRIEDMAN: Can you read that  
9 back.

10 (Record read.)

11 A. Then we went to store and then when  
12 we actually saw these labels.

13 Q. So that I am clear, you are  
14 testifying that you had not seen this label,  
15 and by "this label" I am referring to  
16 Exhibit 104, before you designed the label that  
17 we see in Exhibit 110?

18 A. Yes.

19 Q. I will ask you to look at what we  
20 have had marked previously as Exhibit 106.  
21 Please let me know when you have had a chance  
22 to look at that.

23 (Document review.)

24 Q. Have you had the chance to look at  
25 Exhibit 106?

1 Bekker - Confidential

2 A. Yes.

3 Q. Do you remember if you have ever  
4 seen this label before today?

5 A. Never.

6 Q. You have never seen this before  
7 today?

8 A. Never.

9 Q. Do you sell a product known as Lappi  
10 cheese, L-A-P-P-I?

11 A. No. We sell the product called  
12 Amish Lappi cheese.

13 Q. I will ask you to look at what was  
14 previously marked as Exhibit 127 and let me  
15 know when you are done looking at that.

16 (Document review.)

17 A. Okay.

18 Q. Can you identify what is in  
19 Exhibit 127?

20 A. It's our label that we apply to the  
21 cheese that we call Amish Lappi and REDACTED  
22 Cheese makes this product for us.

23 Q. How long have you been selling the  
24 product sold with this label?

25 A. It all started at about same time,



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# REDACTED

Bekker - Confidential

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# REDACTED

1 Bekker - Confidential

2 understanding?

3 A. I understand that this cheese comes  
4 from Finland. They have their logo.

5 Q. You are through?

6 A. Yes.

7 Q. Do you remember ever selling this  
8 cheese from your store in the 1990s?

9 A. Yes.

10 MR. FRIEDMAN: I'm sorry, could you  
11 read back the last question.

12 (Record read.)

13 Q. Just so I am clear, since we had the  
14 confusion, Mr. Bekker, you stated that you do  
15 remember having sold the cheese bearing the  
16 label that we see in Exhibit 131 in the 1990s?

17 A. Yes, I do remember. Finland Lappi,  
18 yes.

19 MR. THOMPSON: I only ask again  
20 because there was some confusion with the  
21 transcription.

22 Q. Are you familiar with a company  
23 called REDACTED N-O-G-A?

24 A. Yes.

25 Q. And who is REDACTED to your

1 Bekker - Confidential

2 understanding?

3 A. That's the company that would make  
4 yogurt for us and farmer's cheese and  
5 baked-style yogurt.

6 Q. Do they still make those products  
7 for you?

8 A. No, they don't.

9 Q. Do you know when you had them make  
10 those products for you?

11 A. I don't remember for sure when, but  
12 I do remember that we have designed bottles  
13 with a special shape with them. The market  
14 contained all the shape that was square and we  
15 created the rounded shape and that -- those  
16 products were advertised on talk show on the  
17 radio, and when we stopped working with them  
18 Gold Star immediately took the same product  
19 with our bottle and began to sell it.

20 Q. And when was this?

21 A. I don't remember exactly when it  
22 happened. I have to take a look at the  
23 documents when this happened.

24 Q. Can you give me a general idea,  
25 again, between one and ten years someplace?

1 Bekker - Confidential

2 A. Maybe my partner remembers. Should  
3 I ask my partner?

4 Q. No. We will have the opportunity to  
5 ask him if you think he may have a better  
6 recollection.

7 A. I think -- no, I'm afraid I can't  
8 say exactly when, but I think it was about a  
9 year ago. More than a year ago.

10 Q. Do you remember if Gold Star applied  
11 any labels to this product after they started  
12 selling it?

13 THE INTERPRETER: I'm sorry. Can  
14 you repeat that. Maybe I misunderstood  
15 you.

16 Q. Do you remember if Gold Star after  
17 they started selling the product, as you  
18 described it, applied any particular label or  
19 branding to that product?

20 A. No. They called the brand the same,  
21 but the label contained their name instead. We  
22 are talking about kefir.

23 Q. What did you call your product?

24 A. We had kefir, baby kefir. We also  
25 had Babushkine Ryazhenka. I'm sorry. I don't

1 Bekker - Confidential

2 know how to -- grandmother's baked-style kefir,  
3 Babushkine Ryazhenka. And we also had farmer's  
4 cheese, and the farmer's cheese was plain and  
5 also with strawberry and with raisin.

6 Q. And was the farmer cheese also sold  
7 under the Babushkine name?

8 A. No, not with that company.

9 Q. After you stopped working -- am I  
10 correct first -- let me start over.

11 Am I correct that today you are not  
12 selling any products made by REDACTED

13 A. That's correct.

14 Q. After you stopped purchasing  
15 products from REDACTED did you continue to  
16 apply labels to the products that you sold  
17 indicating that they were manufactured by REDACTED  
18 REDACTED?

19 A. We had the labels that were made  
20 under their plant number. After we stopped  
21 working with them, we still had some labels  
22 left. In fact, they delivered those labels to  
23 us themselves and since we did have the  
24 labels -- no, I'm sorry. We had the same  
25 product, identical product, so but from a

1 Bekker - Confidential

2 different manufacturer, but we did use the  
3 labels. We called agriculture and they told  
4 us -- and the agriculture allowed us to use the  
5 labels that we had, but they told us to put the  
6 sticker with a different plant number.

7 Q. Is that the end of your answer?

8 A. Yes.

9 Q. Did you, in fact, put stickers with  
10 different plant numbers on those products?

11 A. Yes.

12 Q. Did that start as soon as you  
13 started selling the products manufactured by  
14 the different manufacturer?

15 A. Yes.

16 MR. FRIEDMAN: I am objecting to  
17 this line of questioning also on grounds of  
18 relevance.

19 Q. Were the products that were  
20 manufactured for you by <sup>REDACTED</sup> kosher products?

21 A. Yes.

22 Q. Do you know if the products that  
23 were manufactured for you by <sup>REDACTED</sup> were then  
24 certified by a rabbi?

25 A. I cannot say now. Because like I

1 Bekker - Confidential

2 said, all we do, we just design the label, but  
3 the ingredients themselves and whether it's  
4 kosher or not the manufacturers themselves must  
5 apply the ingredients, the nutritional quality,  
6 and Kashrut, they the ones that apply. We  
7 don't.

8 Q. I believe you referred to the  
9 Kashrut, K-A-S-H-R-U-T --

10 A. Yes.

11 Q. -- which I understand to be the term  
12 referring to the certification of the product  
13 as being kosher?

14 MR. FRIEDMAN: I will object. I  
15 don't know that it's to the certification  
16 or just a classification.

17 MR. THOMPSON: Okay.

18 MR. FRIEDMAN: I think you are  
19 treading on very confusing grounds right  
20 now. I don't really see why.

21 MR. THOMPSON: Well, right now I am  
22 just attempting to understand, because I  
23 believe -- obviously I don't speak Russian,  
24 but I believe I heard him say the word in  
25 what I believe is either Hebrew or Yiddish



1 Bekker - Confidential

2 "Kashrut," which it's my understanding, as  
3 a Methodist who lives in a Jewish  
4 neighborhood, is a certification that the  
5 product has been approved by a rabbi and is  
6 kosher, but the translator then attempted  
7 to translate it and I was attempting to  
8 make sure that I was understanding what I  
9 could get out of his answer that he used  
10 the word "Kashrut," which I don't think is  
11 a Russian word, but shouldn't be translated  
12 as anything other than Kashrut. That's  
13 what I was trying to get to.

14 MR. FRIEDMAN: Okay.

15 THE INTERPRETER: And I did not  
16 translate it as anything else. Actually,  
17 that's the first time I ever heard this  
18 word.

19 MR. THOMPSON: And I just wanted to  
20 make sure that I was understanding all of  
21 the answer correctly.

22 Q. Now, do you know after you stopped  
23 working with REDACTED if the manufacturer who  
24 manufactured the products that you continued to  
25 sell with the REDACTED plant number on it was

1 Bekker - Confidential

2 a kosher manufacturing facility?

3 MR. FRIEDMAN: I believe that you  
4 are mischaracterizing his prior testimony.

5 MR. THOMPSON: Could I hear what I  
6 said back.

7 (Record read.)

8 MR. THOMPSON: I will break it down  
9 and see if I understand what you said.

10 Q. It's my understanding that there  
11 came a time when you stopped working with REDACTED  
12 REDACTED. Am I correct?

13 A. Yes.

14 Q. And after that time -- at the time  
15 you ceased working with REDACTED they returned to  
16 you some labels?

17 A. Yes.

18 Q. And it's my understanding of what  
19 you said that those labels that you received  
20 back had the REDACTED plant number on them.  
21 Am I correct?

22 A. Yes.

23 Q. Am I correct also that those labels  
24 bore an indication that the product sold under  
25 the label was kosher?

Bekker - Confidential

A. Yes.

Q. It was also my understanding of what you testified earlier that after you stopped working with REDACTED you started working with a different manufacturer to produce a similar product for you.

A. Yes.

Q. It was also my understanding that you provided to this other manufacturer the labels you had received back from REDACTED

A. Yes.

Q. And this second manufacturer applied to the product that they made for you the products that had -- I'm sorry. Let me start over. Let me ask a different question.

What's the name of the manufacturer who you started working with after you stopped working with REDACTED

THE WITNESS: (In Russian.)

MR. THOMPSON: I believe he just asked my client to step out because it was confidential information.

(Ms. Pincow exits.)

MR. THOMPSON: My client,

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Ms. Pincow, has just left the room.

MR. FRIEDMAN: Before we get into this, is this really relevant, Roger?

MR. THOMPSON: I think it is.

(Continued in trade secret/commercially sensitive portion of transcript.)

1 Bekker - Trade Secret/Commercially Sensitive  
2 (Continued from confidential portion  
3 of transcript.)

4 BY MR. THOMPSON:

5 Q. So could you please answer the  
6 question.

7 MR. THOMPSON: And, for the record,  
8 we will mark this as eyes only, this  
9 portion of the transcript as eyes only.

10 MR. FRIEDMAN: I believe that the  
11 TTAB designation is commercially sensitive,  
12 trade secret.

13 MR. THOMPSON: Fine. Trade  
14 secret/commercially sensitive.

15 Q. Okay. Please answer.

16 A. It's called REDACTED Corporation.

17 Q. Just it's easier for me to say  
18 "REDACTED than "the company you started working  
19 with after" just to shorten it.

20 So it's my understanding that you  
21 gave the labels that REDACTED returned to you to  
22 REDACTED

23 MR. FRIEDMAN: Excuse me. So you  
24 had to get trade secret/commercially  
25 sensitive material just so that you could

1 Bekker - Trade Secret/Commercially Sensitive  
2 know what company to refer to in your  
3 questions?

4 MR. THOMPSON: No, I am attempting  
5 to get the answers to my questions so I can  
6 proceed with the questioning.

7 Q. Now, with respect to --

8 MR. FRIEDMAN: But if it's only for  
9 purposes of being able to frame your  
10 question, then I find it highly  
11 objectionable that you would get into  
12 irrelevant material that is commercially  
13 sensitive and trade secret simply to help  
14 you frame your question.

15 MR. THOMPSON: I am also entitled to  
16 then follow up with REDACTED on my own to  
17 make sure that I am getting the right  
18 answers. But in any event, I will ask my  
19 question.

20 Q. It's my understanding, sir, that you  
21 gave to REDACTED the labels that you had received  
22 back from REDACTED

23 A. One more time.

24 Q. It's my understanding from what you  
25 have said, and please tell me if I am wrong,

1       Bekker - Trade Secret/Commercially Sensitive  
2       that you gave to REDACTED the labels that REDACTED  
3       gave back to you?

4           A.       We did not. We sent the labels  
5       because REDACTED had special shape and REDACTED  
6       didn't have the machinery that would apply  
7       these particular labels.

8           Q.       So REDACTED did not apply these labels  
9       to the products?

10          A.       No, they only applied them they made  
11       identical products, but we had to actually  
12       physically apply the labels ourselves until  
13       those labels were over and done with, and we  
14       have received permission to do so from  
15       agriculture.

16          Q.       So I am making sure I understand,  
17       you received back the labels from REDACTED you  
18       contracted with REDACTED to manufacture a product  
19       you believe to be identical; am I correct?

20          A.       Yes.

21          Q.       And REDACTED shipped the products to  
22       Four Seasons without a label?

23          A.       Yes.

24          Q.       And then Four Seasons applied the  
25       label to the products?

1 Bekker - Trade Secret/Commercially Sensitive

2 A. Yes.

3 Q. And those labels were the ones with  
4 the REDACTED plant number on them?

5 A. No. We put a sticker with another  
6 plant number.

7 Q. So you first applied a label and put  
8 a sticker over the label?

9 A. Yes.

10 Q. And those are the products as you  
11 sold them from Four Seasons?

12 A. Yes.

13 Q. Now, do you know if the REDACTED  
14 facility was a kosher-certified facility?

15 A. Yes. And it's still kosher. And  
16 our name is registered with them and the  
17 Koshrat.

18 Q. You said that "our name is  
19 registered with them." With whom?

20 A. REDACTED

21 Q. So your name is registered with  
22 REDACTED

23 A. At Koshrat.

24 Q. With the Koshrat?

25 A. Yes.



1 Bekker - Trade Secret/Commercially Sensitive

2 Q. Are you familiar with a company  
3 called <sup>REDACTED</sup>

4 A. Yes.

5 Q. And who is <sup>REDACTED</sup>

6 A. <sup>REDACTED</sup> they produce farmer cheese for  
7 us.

8 Q. During what period of time?

9 A. I don't remember.

10 Q. Were they the first company to  
11 produce farmer cheese for you?

12 A. No. No.

13 Q. Are they the company that  
14 manufactures farmer cheese for you today?

15 A. No.

16 Q. How many different companies have  
17 you had make farmer's cheese for you since you  
18 first started selling farmer's cheese at Four  
19 Seasons Dairy?

20 A. I don't remember for sure.

21 Q. At least three?

22 A. Yes.

23 Q. Do you know if it's more than five?

24 A. I don't remember for sure.

25 Q. But less than ten?

1 Bekker - Trade Secret/Commercially Sensitive

2 A. I don't remember.

3 Q. Have you ever sold products with the  
4 label indicating that it was made by <sup>REDACTE</sup> even  
5 when the products were not actually  
6 manufactured by "REDACTED

7 A. All our labels contain plant number  
8 and never a word <sup>REDACTED</sup>

9 Q. Do you know if any of the labels  
10 that Four Seasons had used had the <sup>REDACTE</sup> plant  
11 number on it?

12 MR. FRIEDMAN: I'm sorry, could you  
13 read that back, please.

14 (Record read.)

15 A. While we were using the manufacturer  
16 <sup>REDACTED</sup> yes.

17 Q. Do you know if you continued to use  
18 labels with the <sup>REDACTE</sup> plant number on it after you  
19 stopped working with <sup>REDACTED</sup>

20 A. No.

21 MR. THOMPSON: May I see the  
22 original of the exhibit that's in front of  
23 you, the Lappi.

24 THE WITNESS: (Handing).

25 MR. THOMPSON: And the other one.

1 Bekker - Trade Secret/Commercially Sensitive

2 THE WITNESS: (Handing).

3 MR. FRIEDMAN: Roger, is there a  
4 good point for a quick break?

5 MR. THOMPSON: Sure. We can take  
6 one now. I am leaving that subject, so I  
7 can bring Ms. Pincow back in.

8 MR. FRIEDMAN: Okay.

9 (Recess was taken from 4:40 to  
10 4:50.)

11 (Continued in confidential portion  
12 of transcript.)

1 Bekker - Confidential

2 (Continued from Trade

3 Secret/Commercially Sensitive portion of  
4 transcript.)

5 (Ms. Pincow enters.)

6 BY MR. THOMPSON:

7 Q. Mr. Bekker, do you have a criminal  
8 record?

9 A. No.

10 Q. You have never been arrested?

11 A. No.

12 Q. Have any of your products been  
13 subject to a recall from the government?

14 A. Yes.

15 Q. What were the circumstances of that?

16 A. When we began to produce products  
17 called butter blend, the supervisor with the  
18 last name Don Whitehead, he was the chief of  
19 dairy products in the state of New York. He  
20 said that we cannot call the product butter  
21 blend, it must be called butter spread. In  
22 fact, vegetable oil spread. At that moment we  
23 had to recall all our products that was called  
24 butter blend and we had to change all our  
25 labels to vegetable oil spread. But I want to

1 Bekker - Confidential

2 note that this happened only in the state of  
3 New York, because our manufacturer was located  
4 in New Jersey and they didn't change the name  
5 butter blend, so they left that name.

6 Q. When did this happen?

7 A. As far as I remember, it was in  
8 1999, or the end of 1999, the beginning of  
9 2000.

10 Q. And were these products sold under  
11 the name Babushkine?

12 A. Under that name also.

13 Q. So they were sold under two  
14 different names?

15 A. We also had several names applied to  
16 that product.

17 Q. So only one of those names was  
18 Babushkine?

19 A. One of them, yes.

20 Q. What were the other names under  
21 which they were sold?

22 A. One of them didn't have a name, had  
23 design with two cows. We had a name Bazarnoye.

24 Q. Was that the end of your answer?

25 A. Yes.

1 Bekker - Confidential

2 Q. Do you remember ever having been to  
3 the premises of International Gold Star?

4 A. Yes.

5 Q. What were the circumstances under  
6 which you went to those premises?

7 A. I don't remember exactly what year  
8 it was, but we offered them smoked turkey  
9 breast. We brought them about two pallets.  
10 Manager with the name Alexander Alexander took  
11 it. But they didn't pay for that smoked  
12 turkey, but we were there, yes.

13 Q. I thought you testified that Four  
14 Seasons Dairy only made dairy products?

15 A. Yes.

16 Q. So who was it that brought the  
17 smoked turkey breast? What company brought the  
18 smoked turkey breast to Gold Star?

19 A. A&O Corporation.

20 Q. So that was before Four Seasons  
21 Dairy came into existence?

22 A. Yes.

23 Q. Do you remember having any meetings  
24 at Gold Star after Four Seasons Dairy came into  
25 existence?

1                   Bekker - Confidential

2           A.     Yes.

3           Q.     And what were the circumstances of  
4     that meeting?

5           A.     We were invited by Gold Star, and I  
6     don't remember who exactly called us in, Galina  
7     or Robert. I don't remember. My partner, Oleg  
8     Kesler, and I came together to that place, and  
9     the issue was that we would stop selling  
10    products with the name Babushka, they  
11    requested. We had a beautiful conversation  
12    and Galina told us that she has a very good  
13    attorney, that he is actually grandchild of the  
14    Russian writer Mayakovsky. We were grateful  
15    for that news. We actually enjoyed the  
16    conversation. That's it.

17          Q.     What, if anything, did you do in  
18    response to that conversation with respect to  
19    the name "Babushkine"?

20          A.     We talked to our attorney and he  
21    responded to the attorney.

22          Q.     But at that point you continued to  
23    sell products under the name "Babushkine"?

24          A.     Yes, we continued.

25          Q.     At that meeting you said Mr. Robert

1 Bekker - Confidential

2 Pincow and Ms. Galina Pincow were present; am I  
3 right?

4 A. Yes.

5 Q. Was anyone else present?

6 A. I don't remember anybody else.  
7 Well, Oleg Kesler was present.

8 Q. I understood that Mr. Kesler was  
9 present.

10 At that meeting did you tell either  
11 or both Mr. or Mrs. Pincow that you had been  
12 using the mark "Babushkine" since before they  
13 used the mark "Babushka's Recipe"?

14 A. We didn't talk about it anymore.  
15 All they did, they asked us not to sell it  
16 anymore. That's it.

17 MR. THOMPSON: Just give me a  
18 minute. I may be done on my direct.

19 (Recess was taken from 5:01 to  
20 5:03.)

21 BY MR. THOMPSON:

22 Q. Mr. Bekker, we had spoken earlier  
23 about the product recall. Other than the time  
24 you were involved with a product recall, did  
25 Four Seasons receive any other warning letters



1                   Bekker - Confidential

2       or advisory letters from any government agency  
3       about any other labels of Four Seasons  
4       products?

5                   MR. FRIEDMAN: I have to ask for a  
6       readback.

7                   (Record read.)

8       A.       No.

9                   (Continued on next page to include  
10       jurat.)

Bekker - Confidential

Q. Have you ever been requested by any -- other than the recall, have you ever been requested by any government agency to stop using any particular label at Four Seasons?

A. No.

MR. THOMPSON: I have nothing further.

MR. FRIEDMAN: No questions at this time.

MR. THOMPSON: I thank you very much, Mr. Bekker.

(Time noted: 5:07 p.m.)

-----  
ALEXANDER BEKKER

Subscribed and sworn to before me  
this            day of            2008.

[illegible]

I, KRISTIN KOCH, a Notary Public within  
and for the State of New York, do hereby  
certify:

That ALEXANDER BEKKER, the witness  
whose deposition is hereinbefore set forth,  
was duly sworn by me and that such  
deposition is a true record of the  
testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 29th day of October, 2008.

KRISTIN KOCH, RPR, RMR, CRR, CLR

## -----I N D E X-----

| WITNESS          | EXAMINATION BY | PAGE |
|------------------|----------------|------|
| ALEXANDER BEKKER | MR. THOMPSON   | 4    |

## -----EXHIBITS-----

| REGISTRANT   | PAGE | LINE |
|--|------|------|
| Exhibit 140  | 4    | 2    |
| Amended Notice of Deposition of<br>Alexander Bekker..... | 31   | 3    |
| Exhibit 141  |      |      |
| Letter dated December 28, 2005.....                      |      |      |

ERRATA SHEET FOR THE TRANSCRIPT OF:

Case Name: Four Seasons v. Gold Star

Dep. Date: October 22, 2008

Deponent: Alexander Bekker

CORRECTIONS:

| Pg. | Ln. | Now Reads | Should Read | Reason |
|-----|-----|-----------|-------------|--------|
|     |     |           |             |        |
|     |     |           |             |        |
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\_\_\_\_\_  
Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME

THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2008.

\_\_\_\_\_  
(Notary Public) MY COMMISSION EXPIRES: \_\_\_\_\_

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

|                           |   |                                |
|---------------------------|---|--------------------------------|
| -----X                    |   |                                |
| FOUR SEASONS DAIRY, INC., | : | Cancellation No. 92/042,082    |
|                           | : |                                |
| Petitioner,               | : |                                |
|                           | : | Mark: <b>BABUSHKA'S RECIPE</b> |
| v.                        | : |                                |
|                           | : | Reg. No. 2,479,287             |
| INTERNATIONAL GOLD STAR   | : |                                |
| TRADING CORP.,            | : |                                |
|                           | : |                                |
| Registrant.               | : |                                |
| -----X                    |   |                                |

**AMENDED NOTICE OF DEPOSITION OF ALEXANDER BEKKER**

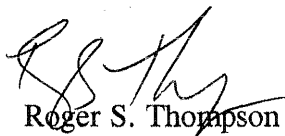
PLEASE TAKE NOTICE that, pursuant to Rule 30(a)(1) of the Federal Rules of Civil Procedure, Registrant, Gold Star International Trading Corp. ("Gold Star"), will take the deposition of Alexander Bekker of Four Seasons Dairy Inc., 255 58th St, Brooklyn, NY 11220 in the above-captioned action, at the offices of Cohen Pontani Lieberman & Pavane, LLP, located at 551 Fifth Avenue, Suite 1210, New York, New York, before a person designated by Rule 28 of the Federal Rules of Civil Procedure, by stenographic and audiovisual means, commencing on October 16, 2008 at 3:00 p.m., and continuing thereafter from day to day until completed.

Four Seasons Dairy, Inc., Petitioner  
v.  
International Gold Star Trading Corp., Registrant  
Cancellation No. 92/042,082  
Registrant Exhibit 140 KK  
10-22-08

You are invited to attend and cross-examine.

Respectfully submitted,  
COHEN, PONTANI, LIEBERMAN & PAVANE

By



Roger S. Thompson  
551 Fifth Avenue  
New York, New York 10176  
(212) 687-2770


Dated: October 10, 2008

*Attorneys for Registrant,*  
International Gold Star Trading Corp.

**CERTIFICATE OF SERVICE**

I hereby certify that on the date set forth below, a true and correct copy of the foregoing Notice of Deposition was served by first-class mail, postage pre-paid, and by e-mail on counsel for petitioner, addressed as follows:

Samuel Friedman, Esq.  
[samfriedman@verizon.net](mailto:samfriedman@verizon.net)  
225 Broadway, Suite 1804  
New York, New York 10007

  
\_\_\_\_\_  
Roger S. Thompson  
*Counsel for Registrant*

October 10, 2008  
Date



**COHEN PONTANI LIEBERMAN & PAVANE**

551 Fifth Avenue, New York, NY 10176 phone 212.687.2770 fax 212.972.5487 www.cplplaw.com

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F. Brice Faller  
Edward M. Reisner

Enshan Hong  
Technical Advisor

December 28, 2005

By Certified mail – Return Receipt Requested

Samuel Fridman, Esq.  
225 Broadway – Suite 1804  
New York, New York 10007

Re: United States Trademark Reg. No. 2,107,774  
Our ref.: 5060-32L

Four Seasons Dairy, Inc., Petitioner  
v.  
International Gold Star Trading Corp., Registrant  
Cancellation No. 92/042,082

Registrant Exhibit 141 KK  
102206

Dear Sam:

We write this letter to you in your capacity as as counsel for Four Seasons Dairy, Inc. ("Four Seasons").

As you know, we represent International Gold Star Trading Corp. ("Gold Star"). In addition, we represent Bunker Hill Cheese Company, Inc. of Millersberg, Ohio ("Bunker Hill"), owner of the federally registered trademark shown in the attached drawing and seller of natural cheeses, including cheese made from yogurt sold under that mark. Gold Star is Bunker Hill's distributor.

It has come to our attention that Four Seasons is selling cheese under a mark which is confusingly similar to our client's mark, on an inferior cheese referred to as a "Yogurt Cheese". Attached is a copy of the label to which we refer. As is evident, the mark applied to Four Seasons' product is strikingly similar to Bunker Hill's registered mark.

Because of the extremely close similarities between our client's long used and well-known trademark and Four Seasons' newly-adopted designation for directly competing goods -- which similarities suggest that Four Seasons adopted the mark with the express intention of benefiting from the resulting confusion -- Four Seasons' use of that designation is likely to cause confusion in the trade and public and among our clients' customers and potential customers, all of whom will be deceived or misled to believe that Four Seasons' goods are produced or distributed or authorized by our client. Moreover, the substantial goodwill that has been engendered in our client's trademark at great expense and through its immensely successful promotion and sales efforts would be seriously diminished and impaired by Four Seasons' continued use of the referenced mark. In light of this, the damage that our client can suffer from Four Seasons' infringing use of the referenced mark -- which use, in our opinion, clearly constitutes both trademark infringement and unfair competition under both federal and state law -- cannot be endured and will not be tolerated.

We must, therefore, insist and seek your prompt assurances that Four Seasons will immediately cease and desist from all further showing, marketing, advertising, offering for sale, sale and shipment of articles bearing or associated with the referenced trademark. In view of the seriousness of this matter, we must demand that you provide us, within fifteen (15) business days of your receipt of this letter, with written notification of Four Seasons' compliance with our demands. In the absence of such notification, our clients will weigh all of their available legal options.





Samuel Fridman, Esq.  
December 28, 2005  
Page 2

The foregoing shall not be deemed a waiver of any claim at law or in equity which our clients may have against Four Seasons or any other party with respect to this matter. We look forward to your prompt response and cooperation.

Very Truly Yours,

COHEN, PONTANI, LIEBERMAN & PAVANE

  
Roger S. Thompson

cc: Bunker Hill Cheese Company, Inc. (w/o encls.)  
International Gold Star Trading Corp. (w/o encls.)  
RST/mam  
Enc. Abstract of United States Trademark reg. No. 2,107,774  
Four Seasons' label

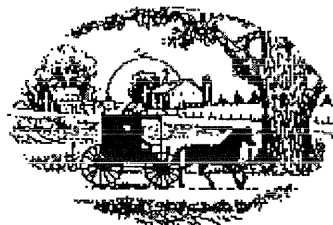


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|                          |  |
|--------------------------|--|
| Goods and Services       | IC 029. US 046. G & S: natural cheese and cheese products, namely, cheese spreads and flavored natural cheeses. FIRST USE: 19960110. FIRST USE IN COMMERCE: 19960110 |
| Mark Drawing Code        | (2) DESIGN ONLY  |
| Design Search Code       | 010501 060903 180102 260301  |
| Serial Number            | 75045462   |
| Filing Date              | January 16, 1996   |
| Current Filing Basis     | 1A   |
| Original Filing Basis    | 1B   |
| Published for Opposition | March 18, 1997   |
| Registration Number      | 2107774  |
| Registration Date        | October 21, 1997   |
| Owner                    | (REGISTRANT) <b>Bunker Hill Cheese Company, Inc.</b> CORPORATION OHIO 6005 CR 77 Millersburg OHIO 44654  |
| Attorney of Record       | Lee B. Beitchman   |
| Description of Mark      | The lining and stippling are features of the mark and not intended to indicate color.  |

Type of Mark      TRADEMARK  
Register          PRINCIPAL  
Affidavit Text    SECT 15. SECT 8 (6-YR).  
Live/Dead  
Indicator          LIVE

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